

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

PUBLIC EMPLOYEES FOR ENVIRONMENTAL )  
RESPONSIBILITY, )  
2000 P Street NW, Suite 240 )  
Washington, D.C. 20036 )

Plaintiff, )

v. )

Civil Action No. )

DEPARTMENT OF THE INTERIOR )  
Office of the Secretary )  
1849 C Street NW, )  
Washington, D.C. 20240 )

**COMPLAINT**

NATIONAL PARK SERVICE, )  
1849 C Street NW, )  
Washington, D.C. 20240 )

Defendants. )

**PRELIMINARY STATEMENT**

1. This action is brought under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.*, as amended, in order to compel the Department of the Interior, Office of the Secretary ("DOI-OS") and the National Park Service ("NPS") to disclose records wrongfully withheld after FOIA requests and subsequent appeals from Plaintiff. FOIA requires that federal agencies respond to public requests for documents, including files maintained electronically, in order to increase public understanding of the workings of government and in order to provide access to government information.
2. Plaintiff Public Employees for Environmental Responsibility ("PEER") is a non-profit organization with tax-exempt status dedicated to research and public education concerning the activities and operations of the federal government. Plaintiff requested

the subject records in order to learn what communications agencies were having with other agencies and nongovernmental entities regarding issues of public concern with immense environmental impacts.

3. The records sought stem from two FOIA requests concerning the decision by NPS not to select a preferred alternative for the Draft Environmental Impact Statement ("DEIS") of the Susquehanna-Roseland Overland Transmission Project ("S-R Project") and concerning funds promised to NPS by PPL Electric Utilities ("PPL") and Public Service Electric & Gas Co. ("PSE & G") for mitigation of the S-R Project. The DEIS failed to report these mitigation funds.
4. Plaintiff submitted the "no preferred alternative" FOIA request to NPS on January 27, 2012. Plaintiff requested copies of all communications concerning Mr. Reidenbach's decision that the DEIS not show an NPS "preferred alternative": (1) between Mr. Reidenbach's office and staff in the Regional Office, the Denver Service Center, the Washington Office of the NPS, the Office of the Secretary of the Interior, the staffs of Delaware Water Gap NRA and the Appalachian NST, and (2) between any NPS official in any of the above offices with any representative of the project proponents - PPL and PSE & G. This request included, but was not limited to letters, memoranda, e-mails, written notes of meetings and of telephone conversations between and among NPS officials of the above named offices and the project proponents.
5. Plaintiff submitted the "mitigation" FOIA request on February 3, 2012 to NPS. Plaintiff requested all communications records (from July 1, 2011 to December 31, 2011) between officials of the Delaware Water Gap NRA, the Appalachian NST, the Northeast Regional Office, the NPS Director's office and the Interior Secretary's office that are related to the

mitigation package, including: (1) any request from the Washington or Regional Offices to field areas to list or describe funding needs or park projects that the superintendents of both parks would like to see funded, and (2) any lists or discussions produced by park managers in response to such requests. This request included, but was not limited to letters, memoranda, e-mails or written notes of meetings and of telephone conversations between officials of Delaware Water Gap NRA, Appalachian NST, Northeastern Regional Office, the NPS Director's office and the Secretary's office.

6. On February 14, 2012, Plaintiff received an e-mail from NPS FOIA Officer, Charis Wilson, stating that both FOIA requests had been bifurcated between NPS and DOI-OS. NPS assigned the following tracking numbers: NPS-2012-00299 for the "no preferred alternative" FOIA request and NPS-2012-00325 for the "mitigation" FOIA request.
7. Plaintiff received no response to the FOIA requests from NPS within 20 working days or within the 10 working day extension as required by 5 U.S.C. § 552(a)(6)(A)(i) and 5 U.S.C. § 552(a)(6)(B)(i). Plaintiff appealed the constructive denial of both FOIA requests on May 25, 2012.
8. On June 14, 2012, Plaintiff received an acknowledgement from FOIA Appeals Officer, Darrell R. Strayhorn of Plaintiff's appeals on the NPS FOIA requests. The FOIA Appeals Officer assigned the "no preferred alternative" FOIA request, NPS-2012-00299, Appeal Number 2012-116, and the "mitigation" FOIA request, NPS-2012-00325, Appeal Number 2012-117.
9. Plaintiff has yet to receive documents responsive to either FOIA request from NPS. Furthermore, Plaintiff has yet to receive a determination of Plaintiff's appeal within 20 working days, as is required by law.

10. With regard to the DOI-OS response to the bifurcated FOIA requests, Plaintiff received two letters from DOI-OS FOIA Officer, Ray J. McInerney on February 13, 2012, acknowledging receipt of the two FOIA requests and assigning them the following tracking numbers: OS-2012-00174 for the “no preferred alternative” FOIA request, and OS-2012-00173 for the “mitigation” FOIA request. DOI-OS stated that they would take a 10 day extension on both FOIA requests.
11. On February 23, 2012, the DOI-OS FOIA Officer responded by letter to both the “no preferred alternative” and “mitigation” FOIA requests. The DOI-OS stated that there were no records responsive to the “no preferred alternative” request, OS-2012-00174, but provided fourteen documents in response to the “mitigation” request, OS-2012-00173.
12. The transmittal letter with the response to OS-2012-00173 did not indicate that this was a final response, but it also did not indicate that it was an interim response and, if so, when Plaintiff could expect to receive the balance of the responsive documents.
13. Plaintiff does not dispute the DOI-OS’s response to the “no preferred alternative” FOIA request, OS-2012-00174, in this complaint.
14. On April 2, 2012, Plaintiff appealed the response to the “mitigation” FOIA request, OS-2012-00173, by DOI-OS on the grounds that the documents received contained no substantive information about the subject matter of the request and constituted a partial constructive denial of the FOIA request. Plaintiff is confident that additional responsive documents exist as NPS official prepared reports to serve as the basis for the mitigation package. DOI-OS FOIA Appeals Officer Darrell R. Strayhorn acknowledged receipt of this appeal on April 17, 2012. Plaintiff appealed the decision to withhold the requested documents.



15. On April 30, 2012, Plaintiff received a letter from the DOI-OS FOIA Appeals Officer stating that the department would fail to meet the 20 working day deadline established by FOIA to respond to an appeal. Plaintiff has yet to receive a full response to FOIA request, OS-2012-00173, or a response to its appeal, as required by law.
16. The conduct of both DOI-OS and NPS in failing to produce an adequate and timely response to Plaintiff's FOIA requests and appeals is arbitrary and capricious. This conduct frustrates Plaintiff's efforts to educate the public regarding decision-making processes that have the potential to create significant negative impacts on protected lands.
17. Plaintiff seeks a court order requiring DOI-OS and NPS to produce immediately the documents sought in the January 27, 2012 and February 3, 2012 FOIA requests, as well as other appropriate relief.

#### **JURISDICTION AND VENUE**

18. This Court has jurisdiction over this action pursuant to the Freedom of Information Act, 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction).
19. This Court has the authority to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*
20. This Court has the authority to award costs and attorneys' fees under 28 U.S.C. § 2412 and 5 U.S.C. § 552(a)(4)(E).
21. Venue is properly vested in this Court pursuant to 28 U.S.C. § 1391(e), because the Defendant resides in this district and a substantial part of the events and omissions which gave rise to this action occurred in this district. Venue is also proper under 5 U.S.C. § 552(a)(4)(B).

**PARTIES**

22. Plaintiff PEER is a non-profit public interest organization, with its main office located in Washington, D.C. and field offices located in Arizona, California, Colorado, Florida, Massachusetts, New Jersey, and Tennessee.
23. PEER is not a commercial enterprise for purposes of the fee waiver provisions of FOIA. *See* 5 U.S.C. § 552(a)(4)(A)(iii). Among other public interest projects, PEER engages in advocacy, research, education, and litigation relating to the promotion of public understanding and debate concerning key current public policy issues, focusing on the environment, public lands, natural resource management, public funding of environmental and natural resource agencies, and ethics in government.
24. Informing the public about these important public policy issues is central to PEER's mission. PEER educates and informs the public through news releases to the media, PEER's website, [www.peer.org](http://www.peer.org), which draws between 1,000 and 10,000 viewers per day, and PEER's newsletter, which has a circulation of approximately 20,000 , including 1,500 environmental journalists.
25. Defendant DOI-OS is an agency of the United States as defined by 5 U.S.C. § 552(f)(1) and is charged with the duty to provide public access to documents in its possession consistent with the requirements of FOIA. DOI-OS is denying Plaintiff access to its records in contravention of federal law.
26. Defendant NPS is also an agency of the United States as defined by 5 U.S.C. § 552(f)(1) and is also denying Plaintiff access to its records in contravention of federal law.

**FACTS**

27. On January 27, 2012, Plaintiff submitted a FOIA request to NPS seeking information

regarding the decision of Regional Director Reidenbach to not include a “preferred alternative” in the DEIS of the S-R Project. Plaintiff sought copies of all communications concerning Mr. Reidenbach’s decision: (1) between Mr. Reidenbach’s office and staff in the Regional Office, the Denver Service Center, the Washington Office of the NPS, the Office of the Secretary of the Interior, the staffs of Delaware Water Gap NRA and the Appalachian NST, and (2) between any NPS official in any of the above offices with any representative of the project proponents - PPL and PSE & G. This request included, but was not limited to letters, memoranda, e-mails, written notes of meetings and of telephone conversations between and among NPS officials of the above named offices and the project proponents.

28. On February 3, 2012, Plaintiff submitted a FOIA request to NPS regarding the receipt of funds from PPL and PPE&G to mitigate the environmental damage caused by the S-R Project. Plaintiff sought all communications records (from July 1, 2011 to December 31, 2011) between officials of the Delaware Water Gap NRA, the Appalachian NST, the Northeast Regional Office, the NPS Director’s office and the Interior Secretary’s office that are related to the mitigation package, including: (1) any request from the Washington or Regional Offices to field areas to list or describe funding needs or park projects that the superintendents of both parks would like to see funded, and (2) any lists or discussions produced by park managers in response to such requests. This request included, but was not limited to letters, memoranda, e-mails or written notes of meetings and of telephone conversations between officials of Delaware Water Gap NRA, Appalachian NST, Northeastern Regional Office, the NPS Director’s office and the Secretary’s office.



29. On February 13, 2012, Plaintiff received two letters from DOI-OS FOIA Officer Ray J. McInerney acknowledging receipt of the two FOIA requests, which had been sent from NPS, and assigning them the following tracking numbers: OS-2012-00174 for the “no preferred alternative” FOIA request, and OS-2012-00173 for the “mitigation” FOIA request. DOI-OS stated that they would take a 10 day extension on both FOIA requests.
30. On February 14, 2012, NPS FOIA Officer Charis Wilson also acknowledged receipt of both FOIA requests by e-mail. NPS stated that both FOIA requests had been bifurcated between NPS and DOI-OS and each agency would respond separately. NPS assigned the following tracking numbers: NPS-2012-00299 for the “no preferred alternative” FOIA request and NPS-2012-00325 for the “mitigation” FOIA request.

NPS Response to FOIA Requests

31. In the February 14, 2012 e-mail from NPS FOIA Officer Charis Wilson, NPS suggested and Plaintiff agreed to limit the scope of both FOIA requests to the following NPS employees: Jon Jarvis, Bert Frost, Beth Johnson, Dennis Reidenbach, Gay Vietzke, Jacki Katzmire, Jennifer Mcconahie, John J. Donahue, Pamela Underhill, Sam Wittington, Barbara J. Johnson, Aaron Gagne, Morgan Elmer, Patrick Malone, Steven Culver, and Paul Wharry. Furthermore, NPS suggested and Plaintiff agreed that the “no preferred alternative” FOIA request, NPS-2012-00299, would be limited in scope to records from June 2011 to December 2011 and the “mitigation” FOIA, NPS-2012-00325, would be limited in scope to records from April 2011 to August 2011.
32. On February 15, 2012, Plaintiff received an e-mail from NPS FOIA Officer Charis Wilson stating that after the requested modifications in the scope of the FOIA requests were completed, the requests were perfected. NPS notified Plaintiff that they would take



a 10 day extension and that plaintiff could expect a response by March 29, 2012.

33. On May 25, 2012, Plaintiff sent an e-mail inquiring into the status of the FOIA requests. The NPS FOIA Officer responded that they were going to be assigned to subject matter experts for review. On May 25, 2012, Plaintiff appealed the constructive denial of both FOIA requests due to the indefinite delay in response.
34. On June 8, 2012, the NPS FOIA Officer sent an e-mail indicating that a response to the FOIA requests would be further delayed pending a meeting with the official responsible for assigning the requests.
35. On June 12, 2012, NPS sent another e-mail indicating that the initial review of materials for the requests was not complete and that the materials would then be subject to a further two reviews at higher levels.
36. On June 14, 2012, Plaintiff received an acknowledgement from FOIA Appeals Officer, Darrell R. Strayhorn of Plaintiff's appeals on the NPS FOIA requests. The FOIA Appeals Officer assigned the "no preferred alternative" FOIA request appeal, Appeal Number 2012-116, and the "mitigation" FOIA request appeal, Appeal Number 2012-117.
37. On June 22, 2012, Plaintiff received an e-mail from the NPS FOIA Officer stating that she had completed her review of the documents for both FOIA requests, but they would be submitted for a review at the Washington, D.C. office, and then to the Solicitor's Office for a final review. No definite timeline for the completion of these further reviews was given. It has now been over four months since the FOIA requests were perfected at NPS.
38. To date, Plaintiff has yet to receive a determination of its appeals, despite passage of the 20 working day period for response, and Plaintiff has not been provided with any

responsive documents from NPS, as is required by law.

39. Plaintiff has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(C) at NPS for both FOIA requests, and now turns to this Court to enforce the remedies and ensure the public access to agency records guaranteed by FOIA.

DOI-OS Response to FOIA Requests

40. On February 23, 2012, Plaintiff received two letters from DOI-OS FOIA Officer Ray J. McInerney responding to the “no preferred alternative” and “mitigation” FOIA requests respectively. With regard to the “no preferred alternative” FOIA request, OS-2012-00174, DOI-OS claimed that there were no records responsive to the request. Plaintiff does not dispute this response in this complaint.
41. With regard to the “mitigation” FOIA request, OS-2012-00173, DOI-OS provided 14 pages of documents nominally responsive to the FOIA request. These documents contained no substantive information about the subject matter of the request. The February 23 letter did not indicate whether this was a final or interim response, and no further documentation has been received. Both the 20 working day period established by FOIA and the 10 day available extension have passed. This lack of complete production within the statutory time limits of FOIA constituted a partial constructive denial of the FOIA request.
42. Plaintiff is confident additional documents responsive to this request exist. NPS, in the DEIS for the S-R Project, does not mention any significant mitigation in the alternatives, as is required by 40 CFR 1502.14(f). Nevertheless, a mitigation package, variously described as between 30 million and 60 million dollars was referenced in a March 29, 2012 update on the S-R Project website maintained by PPL as well as in the public

meetings on the DEIS.

43. The Secretary of the Interior hosted a meeting related to this mitigation package on August 4, 2011. Documents serving as the basis for this mitigation package were prepared by NPS officials and have not been received by Plaintiff.
44. On April 2, 2012, Plaintiff administratively appealed the partial constructive denial of the “mitigation” FOIA request, OS-2012-00173, resulting from the decision to withhold the requested documents.
45. On April 17, 2012, Plaintiff received a letter from DOI-OS FOIA Appeals Officer Darrel R. Strayhorn acknowledging the receipt of the appeal. On April 30, 2012, Plaintiff received a second letter from the DOI-OS FOIA Appeals Officer stating that “due to an extraordinarily large number of appeals,” DOI-OS would not be able to respond to the appeal within the 20 workday period required by law. Plaintiff waited for a response in good faith, but it has now been nearly two months since the last communication from DOI-OS regarding this appeal and it has been five months since the initial FOIA request. Plaintiff has neither received a complete response to its FOIA request nor has it received a determination of its appeal, as required by law.
46. Plaintiff has fully exhausted its administrative remedies under 5 U.S.C. § 552(a)(6)(c) at DOI-OS for the “mitigation” FOIA request, OS-2012-00173, and now turns to this Court to enforce the remedies and ensure the public access to agency records guaranteed by FOIA.
47. President Barack Obama issued an Executive Memo on January 21, 2009, declaring the following policy: “The Freedom of Information Act should be administered with a clear presumption: In the face of doubt, openness prevails. The Government should not keep



information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears....All agencies should adopt a presumption in favor of disclosure, in order to renew their commitment to the principles embodied in FOIA, and to usher in a new era of open Government. The presumption of disclosure should be applied to all decisions involving FOIA.”

### **CAUSE OF ACTION**

#### **Count I: Violation of the Freedom of Information Act**

48. Plaintiff repeats the allegations in paragraphs 1 through 47.
49. The Department of the Interior, Office of the Secretary’s failure to provide an adequate response to Plaintiff’s FOIA request (No. OS-2012-00173), or to make a determination on Plaintiff’s appeal within 20 working days, is a violation of FOIA, 5 U.S.C. § 552, and the agency’s own regulations promulgated thereunder.
50. The National Park Service’s failure to respond to Plaintiff’s FOIA requests (Nos. NPS-2012-299 & NPS-2012-325), or to make a determination on Plaintiff’s appeal within 20 working days, is also a violation of FOIA, 5 U.S.C. § 552, and the agency’s regulations promulgated thereunder.
51. Plaintiff’s FOIA requests have been constructively denied and information responsive to Plaintiff’s FOIA request has been improperly withheld.

### **RELIEF REQUESTED**

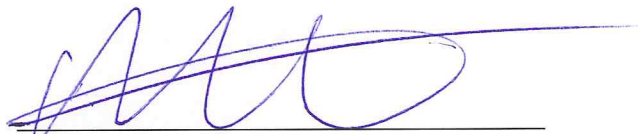
WHEREFORE, Plaintiff respectfully requests and prays that this Court:

- i. Enter an Order declaring that DOI-OS and NPS have wrongfully withheld the requested agency records;

- ii. Issue a permanent injunction directing DOI-OS and NPS to disclose to Plaintiff all wrongfully withheld documents.
- iii. Maintain jurisdiction over this action until both DOI-OS and NPS are in compliance with FOIA, APA, and every order of this Court.
- iv. Award Plaintiff its attorney fees and costs pursuant to 5 U.S.C. § 552(a)(4)(E);  
and
- v. Grant such additional and further relief to which Plaintiff may be entitled.

Dated: June 28, 2012

Respectfully submitted,



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